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Opinion on remand from Supreme Court

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants.	B233419 (Los Angeles County Super. Ct. No. BC457089)

APPEAL from an order of the Superior Court of Los Angeles County. Ann I. Jones, Judge. Affirmed.

Law Offices of J. David Nick and J. David Nick for Defendants and Appellants.

John F. Krattli, Acting County Counsel, Lawrence L. Hafetz, Acting Assistant County Counsel, and Sari J. Steel, Principal Deputy County Counsel, for Plaintiff and Respondent.

Defendants Alternative Medicinal Cannabis Collective (doing business as Alternative Medicinal Collective of Covina), Erik M. Andresen, Kara Reyes, Justin W. Samperi, Martin Hill, and Mardy and Nordy Ying (individually and as trustees) appeal from an order granting a preliminary injunction prohibiting them from operating a medical marijuana "dispensary" in any unincorporated area of the County of Los Angeles (County). Defendants contend that the order granting the injunction should be reversed because the County's blanket ban on medical marijuana dispensaries conflicts with, and is preempted by, the Compassionate Use Act (Proposition 215) enacted by the voters in 1996 authorizing the use of marijuana for medical purposes and the Medical Marijuana Program enacted by the Legislature (as amended) authorizing the operation of a "medical marijuana cooperative, collective, dispensary" in a "storefront . . . outlet." Pursuant to the recent California Supreme Court decision in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729 (*City of Riverside*), we necessarily conclude that County's blanket ban on medical marijuana dispensaries does not conflict with, and is not preempted by, the Compassionate Use Act or the Medical Marijuana Program, and is thus permissible. Accordingly, we affirm the order granting a preliminary injunction.

BACKGROUND

On December 7, 2010, the Los Angeles County Board of Supervisors banned medical marijuana dispensaries in all zones in unincorporated areas of the County effective January 6, 2011. (*County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 866, fn. 4 (*Hill*).) Los Angeles County Code (LACC) section 22.56.196 B provides that "medical marijuana dispensaries which distribute, transmit, give, or otherwise provide marijuana to any person, are prohibited in all zones in the County." Subdivision A.1 plainly states the purpose of the ordinance is to "ban medical marijuana dispensaries in all zones in the County." The ordinance provides that the ban shall remain in effect unless and until the Court of Appeal or the California Supreme Court deems it to be "unlawful," in which event the provisions of the former ordinance, which required a conditional use

permit and business license and imposed location restrictions and operating requirements (set forth in subdivisions D through H), will again take effect.

In March of 2011, County, which had previously sought to enjoin defendants' operation for failure to comply with the provisions of the prior version of LACC section 22.56.196, as we set forth in *Hill*, *supra*, 192 Cal.App.4th at page 865, filed a new nuisance action against defendants on the basis of the newly enacted ban on medical marijuana dispensaries. The first cause of action sought injunctive relief. It alleged, "The Defendants, and each of them, have violated Los Angeles County Code Section 22.56.196 B., Medical Marijuana Dispensaries, by operating or permitting the operation of [a medical marijuana dispensary] on the Subject Property when such use is banned in all zones in the unincorporated areas of Los Angeles County. In so acting, the Defendants, and each of them, have been using the Subject Property in a manner that is not permitted by the Los Angeles County Code." County also alleged, on information and belief, that defendants "have been operating [a medical marijuana dispensary] which is not in compliance with state law. Defendant[s] are not a collective or cooperative or any other business entity that falls within the protections afforded to [*sic*] by the [Medical Marijuana Program] and, therefore, cannot defend their operation on that basis notwithstanding their violations of the County Code." The second cause of action sought declaratory relief and alleged that defendants "established and are operating [a medical marijuana dispensary] on the Subject Property in violation of the Los Angeles County zoning code."

County moved for a preliminary injunction, which defendants opposed. After a hearing, the trial court granted the motion and enjoined defendants and anyone acting on their behalf "from operating or permitting to operate a medical marijuana dispensary and/or possessing, offering, selling, giving away or otherwise dispensing marijuana on or from the subject property at 20050 E. Arrow Highway, in the unincorporated community of Covina, California, and from any other location within the unincorporated area of the County of Los Angeles, pending trial of this action or further order of this court." The

trial court's written ruling on the motion concluded that County's ban on all medical marijuana dispensaries was consistent with, and thus not preempted by, state law. The court characterized the provisions of the Compassionate Use Act of 1996 (CUA) (Health & Saf. Code, § 11362.5; undesignated statutory references are to that code) and the Medical Marijuana Program (MMP) (§ 11362.7 et seq.) as "limited criminal defenses from prosecution for cultivation, possession, possession for sale, transportation and certain other criminal sanctions involving marijuana for qualified patients, persons with valid identification cards and designated primary caregivers of the foregoing," then noted that County's ban "is not a criminal ordinance," but "merely a zoning restriction and has no impact on the criminal defenses provided by the CUA and MMP." The court, citing our prior decision in *Hill, supra*, 192 Cal.App.4th at page 869, stated, "Moreover, the Court of Appeal has specified that, '[t]he statute does not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose,' instead finding that the County has 'authority to regulate the particular manner and location in which a business may operate' under the Constitution." But the court made no factual findings regarding whether defendants had been operating a medical marijuana dispensary in violation of state law.

Defendants appealed the order granting a preliminary injunction and filed a petition for a writ of supersedeas staying the enforcement of the preliminary injunction, which we granted. On July 2, 2012, we filed our original opinion in this matter, in which we agreed that County's blanket ban was preempted by California's medical marijuana laws and reversed the preliminary injunction. County filed a petition for review, which the California Supreme Court granted. After deciding *City of Riverside, supra*, 56 Cal.4th 729, the Supreme Court transferred the matter back to us with a direction to reconsider our decision in light of *City of Riverside*.

DISCUSSION

Defendants contend that County's "TOTAL ban on medical marijuana patient associations formed pursuant to Health and Safety Code section 11362.775 is preempted by general principles of the preemption doctrine [and] unlawful under Health and Safety Code section 11362.83 as a local ordinance not 'consistent' with the Medical Marijuana Program Act." (Italics omitted.) County contends its ban is a permissible land use regulation that is consistent with, and not preempted by, state medical marijuana laws.

In *City of Riverside*, *supra*, 56 Cal.4th 729, the Supreme Court rejected an identical argument regarding Riverside's enactment of a zoning ordinance prohibiting the use of any land within its jurisdiction as a medical marijuana dispensary. The Supreme Court held, "[T]he CUA and the MMP are but incremental steps toward freer access to medical marijuana, and the scope of these statutes is limited and circumscribed. They merely declare that the conduct they describe cannot lead to arrest or conviction, or be abated as a nuisance, as violations of enumerated provisions of the Health and Safety Code. Nothing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders. We must therefore reject defendants' preemption argument . . . ." (*Id.* at p. 738.)

Applying *City of Riverside*, we necessarily conclude that County's blanket ban on medical marijuana dispensaries does not conflict with, and is not preempted by, the CUA or the MMP, and is thus permissible. Accordingly, we affirm the order granting a preliminary injunction.

DISPOSITION

The order is affirmed. Respondent is awarded its costs on appeal.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.